

MARINE PROTECTION AND RESEARCH ACT OF 1971

NOVEMBER 12, 1971.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, with the concurrence of the Committee on Public Works, submitted the following

REPORT

[To accompany H.R. 9727]

The Committee on Commerce, with the concurrence of the Committee on Public Works, to which was referred the bill (H.R. 9727) to regulate the dumping of material in the oceans, coastal and other waters, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Marine Protection and Research Act of 1971".

FINDING, POLICY, AND PURPOSE

SEC. 2. (a) Unregulated dumping of material into the oceans, coastal, and other waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of material into the oceans, coastal, and other waters and to prevent or strictly limit the dumping into the oceans, coastal, and other waters of any material which could adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. To this end, it is the purpose of this Act to regulate the transportation of material for dumping into the oceans, coastal, and other waters, and the dumping of material by any person, subject to the jurisdiction of the United States from any source if the dumping occurs in waters beyond the territorial jurisdiction of the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Oceans, coastal, and other waters" means oceans, gulfs, bays, salt water lagoons, salt water harbors, other coastal waters where the tide ebbs and flows, the Great Lakes and their connecting waters, and the Saint Lawrence River.

(c) "Material" means, but is not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sludge, munitions, radiological, chemical, and biological warfare agents, high-level radioactive waste, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural and other waste; but such term does not mean oil within the meaning of section 11 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1161) and does not mean sewage from vessels within the meaning of section 13 of such Act (33 U.S.C. 1163).

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government (except as to the provisions of subsections (a) through (f) of section 104), of any State or local unit of government, or of any foreign government.

(f) "Dumping" means the addition of any material or combination of materials to that part of the oceans, coastal and other waters beyond the territorial jurisdiction of the United States: *Provided*, That it does not mean a disposition of any effluent from any outfall structure where such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), or under the provisions of section 13 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 407), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided further*, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in the oceans, coastal, and other waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: *And provided further*, That it does not include the deposit of oyster shells or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

(k) "Transport or transportation" means the carriage by a vessel, and related handling, of any material or combination of materials for the purpose of adding such material or combination of materials to the oceans, coastal, and other waters.

TITLE I—OCEAN DUMPING

PROHIBITED ACTS

SEC. 101. (a) No person shall transport any radiological, chemical, or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, and subject to regulations issued under section 106(c) hereof by the Secretary of the department in which the Coast Guard is operating, any other material from the United States for the purpose of dumping into the waters described in section 101(b).

(b) No person shall dump any radiological, chemical or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material (1) in a zone contiguous to the

territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States, or (2) in said contiguous zone or in other high seas areas of the oceans, coastal, and other waters, when transported by any person subject to the jurisdiction of the United States by the fact of removing material therefrom.

(c) No officer, employee, agent, department, agency, or instrumentality of the United States shall transport any radiological, chemical, or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material from any location outside the territory of the United States for the purpose of dumping it into the oceans, coastal, and other waters.

ENVIRONMENTAL PROTECTION AGENCY PERMITS

Sec. 102. (a) Except in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, as provided for in section 101 of this title, the Administrator may issue permits, after notice and opportunity for public hearing, for the transportation of material for dumping or for the dumping of material into the waters described in section 101(b), where the Administrator determines that such transportation, or dumping, or both, will not degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shorelines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes,

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of the oceans, such as scientific, study, fishing, and other living resource exploitation, and nonliving resources exploitation.

In establishing or revising such criteria, the Administrator shall consult with the Secretaries of Commerce, Interior, State, Defense, Agriculture, Health, Education, and Welfare, and Transportation, the Atomic Energy Commission, and other appropriate Federal, State, and local officials. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary.

(b) The Administrator may establish and issue various categories of permits, including the general permits described in section 103(c).

(c) The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping, and when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

(d) Any application for a permit under this section for the transportation for dumping or dumping of dredged material into the waters described in section 101(b) shall be accompanied by a certificate from the Secretary that the area

chosen for dumping is the only reasonably available alternative and, unless the Administrator finds that the material to be dumped will adversely affect municipal water supplies, shellfish beds, wildlife, fisheries (including spawning and breeding areas), or recreation areas, such permit shall issue.

PERMIT CONDITIONS

SEC. 103. (a) Permits issued under this title shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, for the monitoring, surveillance, and enforcement of the transportation or dumping; and (6) such other matters as the Administrator deems appropriate.

(b) The Administrator may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this title as he deems appropriate.

(c) Notwithstanding any other provision of this title, the Administrator may issue general permits for the transportation for dumping, or dumping, or both, of specified material or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) Any permit issued under this Act shall be reviewed not less frequently than every three years, and if appropriate, revised. The Administrator may limit or deny the issuance of permits, or may alter or revoke partially or entirely the terms of permits issued by him under this title, for the transportation for dumping, or the dumping, or both, of specified material, or classes of material, where he finds that such material cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for hearing on such action as proposed.

(e) The Administrator shall require an applicant for a permit under this title to provide such information as he may consider necessary to review and evaluate such application.

(f) Information received by the Administrator as a part of any application or in connection with any permit granted under this title shall be available to the public as a matter of public record, at every stage of the proceeding subject to the provisions of section 552 of title 5 of the United States Code. The final determination of the Administrator shall be likewise available.

(g) A copy of any permit issued under this title shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or his designee.

PENALTIES

SEC. 104. (a) Any person who violates any provision of this title, or of the regulations promulgated under this title, or a permit issued under this title shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this title, regulations promulgated under this title, or a permit issued under this title shall be fined not more than \$50,000, or imprisoned for not more than one year, or both.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(d) For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(e) The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this title, of regulations promulgated under this title, or of permits issued under this title, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(f) A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1163), used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(g) If the provisions of any permit issued under section 102 are violated, the Administrator may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(h) (1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit, established or issued by or under this title. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this title.

(3) (A) Any suit under this subsection may be brought only in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(i) No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe.

RELATIONSHIP TO OTHER LAWS

SEC. 105. (a) After the effective date of this title, all licenses, permits, and authorizations other than those issued pursuant to this title shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this title, and whether issued before or after the effective date of this title.

(b) Prior to issuing any permit under this title, if it appears to the Administrator that the disposition of the material, other than dredged or fill material, to be transported for dumping or to be dumped may affect navigation in the navigable waters of the United States or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(c) After the effective date of this title, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this title. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into the waters described in subsection 101(b) which might affect waters within the jurisdiction of such State and, if the Administrator determines, after notice and opportunity for hearing, that the proposed criteria are not inconsistent with the purposes of this title, he may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate, or regional authority, Federal territory or Commonwealth, or the District of Columbia.

(d) Nothing in this title shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661-666c).

ENFORCEMENT

SEC. 106. (a) The Administrator may, whenever appropriate, utilize by agreement, the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis, in carrying out his responsibilities under this title.

(b) The Administrator may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) The Secretary of the department in which the Coast Guard is operating shall conduct surveillance, monitoring as requested by the Secretary of Commerce, and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping. Such enforcement activities shall include, but not be limited to, enforcement of regulations issued by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage. Upon request by other departments and agencies having responsibilities under this Act, the Secretary of the department in which the Coast Guard is operating shall supply such information as they may require on a reimbursable basis.

REGULATIONS

SEC. 107. In carrying out the responsibilities and authority conferred by this title, the Administrator and the Secretary of the department in which the Coast Guard is operating, are authorized to issue such regulations as they may deem appropriate.

INTERNATIONAL COOPERATION

SEC. 108. The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations in support of the policy of this Act.

EFFECTIVE DATE AND SAVINGS PROVISION

SEC. 109. (a) This title shall take effect six months after the date of the enactment of this Act.

(b) No legal action begun, or right of action accrued, prior to the effective date of this title shall be affected by any provision of this title.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 110. There are hereby authorized to be appropriated not to exceed \$3,600,000 for fiscal year 1973 or \$5,500,000 for fiscal year 1974 for the purposes and administration of this title.

ANNUAL REPORT

SEC. 111. The Administrator shall report annually on or before June 30 of each year beginning June 30, 1972, to the President and to the Congress on his administration of this title, including recommendations for additional legislation if deemed necessary.

TITLE II—COMPREHENSIVE RESEARCH ON OCEAN DUMPING

SEC. 201. (a) The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of research regarding the effects of the dumping of material in the oceans, coastal and other waters, and shall from time to time report his findings (including an evaluation of the short-term ecological effects and the social and economic factors involved) to the Congress.

(b) There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such fiscal year may not exceed \$1,000,000.

SEC. 202. (a) The Secretary of Commerce, in consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. In carrying out such research, the Secretary of Commerce shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans, coastal, and other waters may best be preserved for the benefit of succeeding generations of mankind.

(b) In carrying out its responsibilities under this section, the Secretary of Commerce under the foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of its activities by such channels of communication as may appear appropriate.

(c) In January of each year, the Secretary of Commerce shall report to the President and to the Congress on the results of activities undertaken by it pursuant to this title during the previous fiscal year.

(d) Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purposes of this title and, to the extent permitted by law, to furnish such information as may be requested.

(e) There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such fiscal year may not exceed \$1,000,000.

Amend the title so as to read: "An Act to regulate the transportation for dumping and dumping of material in the oceans, coastal, and other waters, and for other purposes."

PURPOSE OF THE LEGISLATION

As reported, H.R. 9727—The Marine Protection and Research Act of 1971—is divided into two titles: Title I—Ocean Dumping and Title II—Comprehensive Research on Ocean Dumping.

The purpose of Title I of the bill is to regulate the dumping and transportation for dumping of waste material in those parts of the oceans, coastal and other waters beyond the territorial jurisdiction of the United States. The bill bans under all circumstances the transportation for dumping and dumping in waters beyond the territorial jurisdiction of the United States of radiological, chemical, or biological warfare agents and high level radioactive wastes. The bill also bans the transportation for dumping and dumping beyond the territorial jurisdiction of the United States of all other waste materials unless authorized by a permit issued by the Administrator of the Environmental Protection Agency (EPA).

The Administrator is authorized to issue permits for the transportation for dumping and dumping of materials when he deems that such action will not degrade the marine environment or endanger human life, in accordance with criteria that he is to establish by regulation. Civil penalties may be assessed by the Administrator, after notice and opportunity for hearing, and an action may be brought to impose criminal penalties for knowingly violating Title I.

The sum of \$3.6 million is authorized to be appropriated for fiscal year 1973, and \$5.5 million for fiscal year 1972 to carry out the purposes and administration of Title I.

Title II of the bill authorizes and directs the Secretary of Commerce, in coordination with the Secretary of the department in which the Coast Guard is operating and the Administrator of EPA, to initiate a comprehensive program of research on the effects of ocean dumping. There is authorized to be appropriated not to exceed \$1 million to carry out the provisions of section 201 and not to exceed \$1 million to carry out the provisions of section 202 for each of the three fiscal years following enactment.

LEGISLATIVE BACKGROUND

Against a background of burgeoning wastes from our society and a growing concern for their disposal, the Council on Environmental Quality published a report to the President, entitled "Ocean Dumping—A National Policy", in October 1970. The report summarizes the dimensions and immediacy of the problems created by disposal of wastes at sea and the need for clear national policy and legislation to regulate the pollutants being added to the oceans by the United States. It also calls for appropriate international action.

Early in the 92d Congress, President Nixon submitted proposed legislation to implement the recommendations of the Council's ocean dumping report. The bill was introduced by Senator Caleb Boggs for himself and 37 Senators as S. 1238, and was referred jointly to the Committees on Commerce and Public Works. Other bills were also introduced to regulate or ban the disposal of waste materials in the oceans. These include S. 192, introduced by Senator Nelson, S. 1082, introduced by Senator Case, and S. 1286, introduced by Senator Boggs.

Hearings were held on the pending bills on March 2 and 3, and April 15, 21, 22, and 28, 1971. On August 4, 1971, the Subcommittee on Oceans and Atmosphere ordered H.R. 9727, the companion bill to S. 1238, to be reported to the full Committee on Commerce. After three executive sessions, the Committee on Commerce ordered H.R. 9727 reported, with amendments in the nature of a substitute text and an amended title, on November 8, 1971.

As reported, H.R. 9727 reflects an agreement between the Chairmen of the Committees on Commerce and Public Works, ensuring consistency between H.R. 9727 and the proposed Federal Water Pollution Control Act Amendments of 1971 (S. 2770). By way of background, the Committee on Commerce has exclusive legislative jurisdiction over transportation within the internal and territorial waters of the United States, and beyond in the contiguous zone and other high seas areas of the oceans. The Committee shares equally with the Committee on Public Works jurisdiction over legislation affecting the discharge of pollutants into the territorial waters of the United States, other than from outfalls. Beyond the territorial waters of the United States, the Committee on Commerce has exclusive legislative jurisdiction over discharge of pollutants into the contiguous zone and other high seas areas of the oceans, with the exception of outfalls extending from land into such areas.

Under the agreement between the Committees on Commerce and Public Works, all dumping of waste materials and pollutants into the Great Lakes and the territorial seas surrounding the United States, and all discharges from outfall structures extending from land, would be governed and regulated under the proposed Federal Water Pollution Control Act Amendments of 1971 (S. 2770). All dumping and transportation for dumping of waste materials and pollutants in those parts of the oceans beyond the territorial jurisdiction of the United States would be governed and regulated by the Marine Protection and Research Act of 1971 (H.R. 9727). Both Acts would be administered by the Administrator of the Environmental Protection Agency.

H.R. 9727, as reported by the Committee on Commerce insofar as it relates to ocean dumping under Title I, has been reviewed by and concurred in by the Committee on Public Works.

NEED FOR THE LEGISLATION

Man's wastes have reached the oceans since time immemorial, for the oceans are the natural repository of water running off the land, and of particles settling out of the air. Clearly the problems resulting from disposal of wastes into the sea are not limited to the period following the industrial revolution. As long ago as 1675 Governor Edmund Andros of New York decreed that all persons were forbidden "to cast any dung, dirt or refuse of ye city, or anything to fill up ye harbor or among ye neighbors or neighboring shores, under penalty of forty shillings."

What is new is the volume and the toxicity of the wastes of which technological societies must dispose. To deal with these volumes of

poisons requires (1) basic changes in our attitudes toward nature, (2) regulation of the wastes that find their way to the sea, and (3) research to understand the effects of waste disposal on the marine environment, or human health, and indeed, on life itself.

As Captain Jacques Cousteau noted recently before the first session of the International Conference on Ocean Pollution convened by the Committee on Commerce:

. . . Man has probably been on this planet for about one million years. Until the start of the industrial revolution—let's say five generations ago—man had at his disposal only a maximum power of one horse, and his number and his absence of natural weapons made him an indentured servant of nature.

So during all these million years man had to fight nature. He had no fangs, no protection, soft skin. He had to fight nature just to survive.

Certainly in five generations, because of the industrial development, we must completely change our thinking, reverse it 180 degrees, and understand that the only chance of survival is not to fight nature but to protect nature.

This change-about in our psychology is almost impossible to do without a tremendous effort. So I believe that the remedy is psychological. We must clearly become conscious of this change, and the things can happen. (Committee on Commerce, International Conference on Ocean Pollution, October 18, 1971. Stenographic transcript, at p. 15)

Until the onset of the industrial revolution, and still so today in those less technologically developed countries of the world, the wastes from man's activities that found their way to the sea were predominantly organic, and readily assimilated by the sea. But the industrial revolution has brought with it an unnatural distribution and concentration of new and often highly toxic materials and chemicals. Until recently, little has been asked, much less known about the effects of dumping these materials and chemicals into the oceans, or of the displacement of dredged materials that have accumulated heavy metals, chemicals, and a variety of other wastes. There still remains much which is unknown concerning the impact of man's dumping into the ocean environment, accounting for the provisions to be found in Title II of H.R. 9727 dealing with comprehensive research on this subject.

We have treated the oceans as enormous and indestructible—145 million square miles of surface—the universal sewer of mankind. Previously we thought that the legendary immensity of the ocean was such that man could do nothing against such a gigantic force. But the real volume of the ocean is very small when compared to the volume of the earth and to the volume of toxic wastes that man can produce with his technological capability. The water reserve on our spaceship is very small. And again, as Captain Cousteau has said:

The cycle of life is intricately tied with the cycle of water. Anything done against the water is a crime against life. The water system has to remain alive if we are to remain alive on

this earth. (Committee on Commerce. International Conference on Ocean Pollution, October 18, 1971. Stenographic transcript, at pp. 10-11.)

In transmitting his message on "Ocean Dumping—A National Policy" to the Congress last year, President Nixon stated:

The oceans, covering nearly three-quarters of the world's surface, are critical to maintaining our environment, for they contribute to the basic oxygen-carbon dioxide balance upon which human and animal life depends. Yet man does not treat the oceans well. He has assumed that their capacity to absorb wastes is infinite, and evidence is now accumulating on the damage that he has caused. Pollution is now visible even on the high seas—long believed beyond the reach of man's harmful influence. In recent months, worldwide concern has been expressed about the dangers of dumping toxic wastes in the oceans. (See *Congressional Record*, October 7, 1970, at p. S 17405; H. Doc. No. 91-399.)

The need for ocean dumping legislation is well stated in the summary findings and recommendations of the Council on Environmental Quality:

Ocean-dumped wastes are heavily concentrated and contain materials that have a number of adverse effects. Many are toxic to human and marine life, deplete oxygen necessary to maintain the marine ecosystem, reduce population of fish and other economic resources, and damage aesthetic values

The Council's study indicates that the volume of waste material dumped in the oceans is growing rapidly because the capacity of land-based waste disposal sites is becoming exhausted in some coastal cities, communities are looking to the oceans as a dumping ground for their wastes. Faced with higher water quality standards, industries may also look to the oceans for disposal. The result could be a massive increase in the already growing level of ocean dumping. If this occurs environmental deterioration will become widespread. . . .

* * * * *

Current regulatory activities and authorities are not adequate to handle the problems of ocean dumping. States do not exercise control over ocean dumping and generally their authority extends only within the 3-mile territorial sea. The Army Corps of Engineers authority to regulate ocean dumping is also largely confined to the territorial sea. The Corps has responsibility to facilitate navigation, chiefly by dredging navigation channels. As such, it is in the position of regulating activities over which it also has operational responsibility. The Coast Guard enforces several Federal laws regarding pollution but has no direct authority to regulate ocean dumping. The authority of the Federal Water Quality Administra-

tion does not provide for issuance of permits to control ocean dumping. And the Atomic Energy Commission has authority only for disposal of radioactive materials. . . . ("Ocean Dumping—A National Policy." A report to the President prepared by the Council on Environmental Quality, October 1970, at p. v)

The Council's report, which relies heavily upon the work of the Dillingham Corporation, under contract to the Department of Health, Education and Welfare, indicates that over 48 million tons of wastes were dumped into the oceans from sources within the United States in 1968. But weight and volume of waste materials disposed by ocean dumping do not tell the entire story.

Other materials, of relatively low weight but high toxicity, such as radioactive waste and chemical and biological warfare agents, can produce untold harm to natural and human life. The problem was well stated by Dr. Howard Sanders of Woods Hole Oceanographic Institution at the hearings before the Subcommittee on Oceanography on dumping of nerve gas rockets in the ocean :

. . . Dumping of wastes into the depths of the ocean seems a simple solution to the problems that plague us. However, the apparent simplicity is rather a reflection of our ignorance. . . .

My areas of apprehension are broad. Other than dumping of nerve gases I am most uneasy about the extensive plans for oil drilling and the discharging of domestic wastes, chemicals, minerals and other byproducts of our technology by proposed giant outflows into the deep sea.

The ocean floor at these depths lies below the thermocline.

Therefore, the area of discharge, dumping or drilling will be in a region of remarkable stability regarding its physical properties.

Temperature, salinity, oxygen conditions, and other factors in contrast to shallower waters are essentially unvarying and have changed little over many thousands and even millions of years.

In this context we must bear in mind that the driving force of evolution is toward ever finer adaptations of an organism to its environment. Thus, under conditions of constancy and predictability over geologically long periods of time there have evolved in the deep sea a delicately attuned, highly sensitive assemblage of organisms with very narrow range of tolerances.

Such communities can be expected to be most fragile.

As a consequence, a perturbation or stress that might have little significance in the variable and less predictable shallow waters could have severe and perhaps catastrophic implications in the deep sea.

Deep sea drilling and the diverse and exotic wastes of which the toxic chemical agents under consideration today are prime examples that will be discharged into this environment in my opinion offer the potential for such a catastrophe, (Commit-

tee on Commerce, Hearings on Dumping of Nerve Gas Rockets in the Ocean, Serial 91-76, at p. 25)

However, as emphasized by various professional witnesses from the waste management field, all ocean dumping need not be banned outright. Ocean dumping of selected types of waste is permissible and may be quite desirable. Dr. David D. Smith, Director of Program Development, Dillingham Environmental Company, and author of the Dillingham report on ocean dumping, stated:

. . . [T]he marine waste disposal issue boils down to this: Man produces large volumes of waste which must be disposed of. The question is: Where are we going to put it? If we can recognize the ocean's ability to accept enormous volumes of waste, then the key decision is simplified. It becomes what types of waste can we put into the sea safely and what must be disposed of elsewhere.

* * * * *

There is a need to recognize in the bill that will be reported out by this committee that the wastes assimilative capacity of the sea is enormous . . .

I can hardly overstate or overemphasize that there has been a general failure to recognize this.

* * * * *

My second point . . . Sea disposal is highly desirable for compatible or quasi-natural waste.

* * * * *

The third point, the new law needed to regulate oceanic disposal should facilitate rather than hinder such types of marine disposal. I think this is critical. The law must have specific provisions pointing out that there are desirable aspects of marine disposal.

Finally, my fourth point, the law must authorize and facilitate research on marine disposal of wastes. (Committee on Commerce, Hearings on Ocean Waste Disposal, Serial No. 92-11, at pp. 206-207)

RESEARCH GOALS OF WASTE MANAGEMENT

Proposing two basic goals that would (1) set in motion the machinery that would enable us to find out what is happening to the sea and what can be done about it and (2) taking what action now that we can, Dr. Eugene V. Coan, of the Sierra Club, stated that the research goals of waste management must be:

(1) . . . to establish natural levels or the existing levels of contamination for as many substances as possible over as wide an area as possible; (2) to establish water quality criteria based on extensive testing of wide array of substances on a wide variety of marine organisms. We need

to look not only for the immediate toxicity of the substances but their subtle effects on the health and reproductive ability of marine organisms for more than one generation. (Committee on Commerce, Hearings on Ocean Waste Disposal, Serial No. 92-11, at p. 176)

Thus, the rationale for enforcement of ocean dumping restrictions can be more readily developed with the advent of technical and scientific information. As pointed out by Mr. John D. Parkhurst, Chief Engineer and General Manager, County Sanitation District, Los Angeles County, such scientific knowledge would provide valid arguments to support local, State, and national funding to finance construction of necessary treatment and disposal facilities. It would also offer assurance that public monies spent for design and construction of facilities would be more wisely invested. Only meager information exists with regard to what concentrations and which of the chemicals or toxicants have deleterious effects on the marine ecology and what processes can best be utilized to treat or remove such materials prior to discharge to the marine waters. (See Committee on Commerce Hearings, Serial No. 92-11, at p. 123)

A program of research is required to provide the information and understanding of the changes in oceans and environmental conditions which result from man's activities. The research program would include measurement of chemical and biological contamination of the ocean and analysis of such information to enable prediction of contamination trends. In order to deal effectively with ocean pollution problems we must understand the effects of ocean contaminants upon ocean life and marine ecology. We must develop a predictive capability. We must understand the persistence of pollutants in the ocean, and we must have information and data available for governments and those responsible for operating in or managing ocean resources. As observed by the National Academy of Sciences—National Academy of Engineering:

Effective rational management of the growing volume and variety of wastes generated by our accelerating coastal urbanization requires immediate initiation of a coordinated, long-term national program of research and investigation involving government, industry, and universities. (Wastes Management Concepts for the Coastal Zone, National Academy of Sciences—National Academy of Engineering, 1970, at p. 83.)

It is no longer sufficient that design of waste treatment disposal systems be concerned primarily with remaining aerobic conditions in the receiving waters. We must now look for scientific, quantitative guidelines to assist engineers who have responsibility for designing waste treatment and disposal systems. Methods are available for assessing a broad range of marine receiving water values, and must be begun through a comprehensive program of research.

REJECTION OF MARINE SANCTUARIES

The Committee has carefully studied the rationale for marine sanctuaries as proposed in Title III of H.R. 9727 as it passed the House

of Representatives, and has rejected the proposed sanctuaries. For numerous reasons set out below, the Committee feels that as proposed, the principal purposes for which marine sanctuaries should be established would not be accomplished by the proposed legislation.

The Committee believes that the establishment of marine sanctuaries is appropriate where it is desirable to set aside areas of the seabed and the superjacent waters for scientific study, to preserve unique, rare, or characteristic features of the oceans, coastal, and other waters, and their total ecosystems. In this we agree with the members of the House of Representatives. Particularly with respect to scientific investigation, marine sanctuaries would permit baseline ecological studies that would yield greater knowledge of these preserved areas both in their natural state and in their altered state as natural and manmade phenomena effected change.

Clearly the United States can unilaterally set aside marine sanctuaries in areas under its exclusive jurisdiction, that is, to the outer limits of the territorial sea. In order to be effective beyond the territorial sea, it is necessary to enter into international agreements in order to set aside sanctuaries not only from domestic uses, but also from foreign uses. The range of domestic authority beyond the outer limits of the territorial sea is narrow. The customs, fiscal, immigration, or sanitary purposes for which a coastal State may exercise control in a nine-mile contiguous zone seaward of the territorial sea under the terms of the Convention on the Territorial Sea and the Contiguous Zone do not justify setting aside areas as marine sanctuaries. The sovereign rights that a coastal State exercises over the resources of the continental shelf do not extend to the superjacent waters, which are high seas. An effective marine sanctuary must include control over the seabed as well as the water column above. And if the purpose of proponents of marine sanctuaries is to control or prohibit the exploitation of resources of the seabed and subsoil, such authority already exists under the Outer Continental Shelf Lands Act.

Marine sanctuaries require the forbearance of all people, United States citizens and foreign citizens, from acts that would destroy or harm the natural values within the sanctuary. United States jurisdiction does not extend to foreign people or ships in high seas areas; domestic legislation authorizing designation of marine sanctuaries in such areas would be ineffective unless international agreements were executed to establish sanctuaries and to regulate the conduct of signatories in them.

An additional consideration is essential to any such decisions. It is in the best interests of all maritime nations, the United States included, to assert narrow geographical claims to sovereignty or sovereign rights in the world's oceans. Important commercial, scientific, and naval concerns are at stake whenever a coastal State asserts exclusive jurisdiction over areas that were previously high seas and open to all nations to use with reasonable regard to the interests of all other States in their exercise of the freedom of the high seas. To authorize designation of marine sanctuaries in high seas areas by the United States is inconsistent with the traditional stance of this country in such matters, as well as being inconsistent with the position taken by the Department of State in preparation for the Conference on the Law of the Sea under United Nations auspices, scheduled for 1973.

INTERNATIONAL IMPACT OF THIS LEGISLATION

The United States is presently proceeding with the negotiation of an international convention to deal with ocean dumping on a global scale. These negotiations are taking place in the forum provided by sessions of a working group preparing for the 1972 UN Stockholm Conference on the Human Environment. The present U.S. efforts would be materially aided by prompt passage of a separate ocean dumping act along the lines of H.R. 9727, as reported by the Committee.

Other negotiations on new environmental conventions also are underway in three different forums. Besides the ocean dumping topic, work taking place for the Stockholm Conference also covers proposals for a World Heritage Trust and protection of endangered species. The 1973 Law of the Sea Conference preparatory committees are examining the environmental aspects of seafloor mining and drilling activities. And the 1973 Intergovernmental Maritime Consultative Organization (IMCO) Conference will consider measures to control pollution from ships, including replacement of the 1954 Oil Pollution Convention with a more stringent set of provisions, and ship construction standards for carriers of oil and other noxious substances, which like Public Law 89-551 will be considered by the Committee on Commerce at such future date, if such international action is taken. Together, these efforts should culminate in a new second generation of environmental conventions, following on the first set of agreements relating only to oil spills negotiated through IMCO in 1969.

Most of the subjects now being discussed are important not only environmentally but economically as well. Since much of current economic concern stems from the relative competitive position of different nations in world markets, it is important to get as many nations as possible to impose like environmental restraints upon themselves.

At the moment, each of the subjects of the foregoing conventions relate to a matter which is traditionally a focus of international concern. Even though the U.S. draft convention did not reach into international affairs in the ocean dumping negotiations the U.S. has found that a number of eastern and western European nations are so concerned about this possibility that they have stated that they will resist any application of such a convention to such matters. Accordingly, the U.S. domestic legislation can promote international agreement by treating the subject of ocean dumping in international waters separately. By taking this route, the U.S. can tend to equalize our competitive position relative to European industry. A good part of European industry uses the sea as a dumping ground for wastes. Under the proposed U.S. draft convention these practices would have to change, resulting in a considerable economic impact.

COMMITTEE AMENDMENTS AND SECTION-BY-SECTION ANALYSIS

The first Committee amendment, in the form of a substitute text, may be described as follows:

The Act may be cited as the "Marine Protection and Research Act of 1971." This short title accurately reflects the provisions of H.R. 9727 resulting from deletion of Title III, Marine Sanctuaries.

Section 2. *Finding, Policy, and Purpose.* This section makes findings on the dangers of unregulated dumping of materials into the oceans, coastal, and other waters, and declares as Congressional policy that the United States should regulate the dumping into waters beyond the territorial jurisdiction of the United States of all types of materials by any person subject to the jurisdiction of the United States and which could adversely affect the human and marine environment.

The purpose of the Act is declared to be the regulation of the transportation of material for dumping into the oceans, coastal, and other waters beyond the territorial jurisdiction of the United States, and as to any person subject to the jurisdiction of the United States, to regulate dumping in waters beyond the territorial jurisdiction of the United States.

Section 3. *Definitions.* This section defines the various terms used in the bill, such as the following:

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Oceans, coastal, and other waters" includes all oceans, gulfs, and bays, both within and without the territorial jurisdiction of the United States, and its coastal waters. The term also includes the Great Lakes, the connecting waters between those lakes, and the St. Lawrence River.

(c) "Material" means dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, high-level radioactive wastes, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, industrial, municipal, agricultural and other waste. The term does not include oil, as that term is defined in section 11 of the Federal Water Pollution Control Act, as amended, and sewage from vessels within the meaning of section 13 of that Act. These two materials—oil and sewage from vessels—are considered to be adequately regulated under the cited Act.

The Committee has made the definition of "material" equivalent to the definition of "pollutant" as used in the proposed Federal Water Pollution Control Act Amendments of 1971 (S. 2770), with certain exceptions that are not applicable to the respective bills, in order to promote consistency between the two pieces of legislation.

(d) The term "United States" extends to the several States, Puerto Rico, the Canal Zone, the District of Columbia, the territories and possessions of the United States, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(e) The term "person" includes any private person or entity, such as a corporation or partnership, and any officer, employee, agent, department, agency or instrumentality of the Federal Government, except as to the penalty provisions of section 104, of a State or local unit of government, or a foreign government.

(f) The term "dumping" refers to the addition of any material or combination of materials to that part of the oceans, coastal, and other waters beyond the territorial jurisdiction of the United States. It does not, however, include the disposal of material from outfall structures where the disposal from those structures is regulated under either the Federal Water Pollution Control Act or the Refuse Act of 1899. Out-

fall structures are considered to be identifiable, artificial, or artificially adapted to natural discharge of effluents (such as those from sewage treatment plants) which are transmitted either from facilities located on shore or from artificial islands or other fixed structures located off-shore. "Outfall structures" do not include the primary means of dredging. In addition, "dumping" does not include the routine discharge of effluent which is incidental to the propulsion of vessels or which results in a discharge of effluent overboard from the operation of motor-driven equipment of vessels, such as power winches.

Further, "dumping" does not include the placement of construction materials in the construction of any fixed structure or artificial island, nor does it include the intentional placement of a device either in the waters covered by the bill or on or in the submerged land beneath such water, if the placement of the device is for a purpose other than disposal, and if the placement of the construction material or the device is otherwise regulated, either by an appropriate Federal or State statute, or as a part of an authorized Federal or State program. Finally, "dumping" does not include the deposit of oyster shells or other material for the purpose of developing, maintaining or harvesting fisheries resources, if the deposit of the oyster shells or other materials is either regulated by appropriate Federal or State statutes, or occurs as a part of an authorized Federal or State program.

(g) "District Court of the United States" includes the District Courts of Guam, the Virgin Islands, Puerto Rico, and the Canal Zone and, in relation to American Samoa and the Trust Territory of the Pacific Islands, the District Court for the District of Hawaii.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" refers to the physically and radioactively "hot" material, often with a half-life extending into thousands of years, which is produced as a result of refining fuel cores for nuclear reactors. This definition, coupled with the prohibitions contained in section 101, is intended to assure that, wherever these and similar wastes are ultimately placed, they will not be disposed of in the oceans.

(k) "Transport or transportation" means the carriage by a vessel, and related handling, of any material or combination of materials for the purpose of adding such material or combination of materials to the oceans, coastal, and other waters.

TITLE I—OCEAN DUMPING

Section 101(a). *Prohibited Acts.* This subsection prohibits the transportation from the United States for the purpose of dumping of any radiological, chemical, or biological warfare agents and high-level radioactive wastes beyond the territorial jurisdiction of the United States. This would prohibit the dumping of herbicide compounds intended for use in warfare activities, and would further bar the dumping of nerve gases, as occurred in late 1970 off the coast of Florida. As to these materials, no permit could lawfully be issued by the Administrator. All other materials as defined in the Act, might be transported for dumping only pursuant to a permit issued under the provisions

of section 102 of this title, subject, however, to regulations issued under section 106(c) by the Secretary of the department in which the Coast Guard is operating.

(b) This subsection prohibits dumping, whatever the origin or source (1) into the contiguous zone, to the extent that the dumping in the contiguous zone may affect the territorial sea or territory of the United States, or (2) as to persons subject to the jurisdiction of the United States by the fact of removing any material therefrom, in other high seas areas, of any radiological, chemical, or biological warfare agent or high-level radioactive waste. It also prohibits the dumping of any other material covered by the bill whatever its origin or source, into the same waters, except as authorized in a permit issued under section 102 of this title.

(c) This subsection prohibits the transportation of any radiological, chemical, or biological warfare agent or high-level radioactive waste by any Federal employee or agency from a source outside the United States for dumping into the oceans, coastal, and other waters. It also bars a Federal employee or agency from transporting any other material for dumping into such waters from a location outside the territory of the United States unless authorized by a permit.

The prohibition of acts in section 101 on the jurisdictional basis of regulating transportation is an appropriate assertion of sovereignty of the United States without breaching the inherent issues of international maritime law. For example, Article 2 of the 1958 Geneva Convention on the High Seas provides in part "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. . . ." Direct assertion of United States jurisdiction over persons other than U.S. nationals on the high seas might violate this provision of the Convention. Assertion of such jurisdiction could be taken as precedent in other parts of the world for other unilateral infringements of freedom of the seas. If the United States claimed jurisdiction over other persons and the vessels of other countries on the high seas for the purpose of protecting them from ocean dumping, other countries could assert the right to exercise jurisdiction for other purposes, some reasonable and some not, but all equally invalid according to international law. Merchant shipping could be severely restricted and naval mobility could be seriously jeopardized. The potential for serious international dispute and conflict is obvious.

On the other hand the right to regulate commerce, including commerce carried by foreign vessels, proceeding from ports of a country is well recognized in international law as well as the power of the Congress to regulate interstate and foreign commerce under the commerce clause of the Constitution of the United States (Article I, Clause 3). Asserting jurisdiction to regulate transportation by persons subject to the jurisdiction of the United States for the purpose of dumping in the oceans (whether they be high seas or not) attains the same objective as a direct prohibition of dumping without doing violence to principles of international law.

Section 102(a). *Environmental Protection Agency permits.* This section authorizes the Administrator of the Environmental Protection Agency to issue permits for the transportation of material for dumping other than the material banned in section 101 in areas beyond the territorial jurisdiction of the United States.

Before issuing the permit, the Administrator must give notice and an opportunity for public hearings. Such notice given to the public shall provide a reasonable period of time within which interested persons may express their views concerning the permit application, as well as making available to the public information received by him regarding such permit or application therefor, subject to the provisions of section 552 of Title 5 of the United States Code. If the Administrator determines that a new question is presented, that the implications of granting or denying a permit are significant, or that there is substantial public interest in the application, it is intended that he will hold a public hearing before determining whether a permit should be issued and if so, what the terms of the permit should be.

Permit issuance may come only after the applicant has shown that the proposed activity will not degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems (which include fish and other living and nonliving resources), or the economic potentialities which would be affected by the permitted activity.

In order to make the determination required above, the Administrator is required to establish and apply certain criteria for reviewing and evaluating permit applications, and in the establishment of such criteria or revisions thereof, the Administrator is required to consult with several specified interested Federal departments and other appropriate Federal, State, and local officials. The criteria as established or revised must take into account, but need not be limited to, the need for the proposed dumping, the effect of such dumping on human health and welfare, the effect on fisheries resources, plankton, fish, shellfish, wildlife, marine mammals, shorelines and beaches, and the effect of dumping on marine ecosystems (including marine plant life), as well as the persistence and permanence of the effects, the effect of particular volumes and concentrations of materials, an evaluation of appropriate alternative locations and methods of disposal or recycling, the effect on other uses of the oceans, and the possible effects of denying a requested permit.

The Committee has consulted with the Committee on Public Works and amended the bill to make the required criteria consistent with those required under the Federal Water Pollution Control Act Amendments of 1971 (S. 2770).

(b) The Administrator may establish and issue various categories of permits, in order to facilitate the administration of this title, including general permits provided for in subsection 103(c).

(c) Considering the criteria previously established pursuant to subsection (a), the Administrator may designate sites or times which he recommends for dumping, and, when he finds it necessary to protect critical areas, shall also designate sites and times within which certain materials may not be dumped. Certain areas are so critical or valuable that it may be necessary for the Administrator to prohibit the dumping either of all material, or of certain kinds of material that may affect the area. Such areas include shellfish beds, breeding or spawning areas, resort beaches, and similar areas. The Administrator is not expected to create "prohibited areas" unless and until he finds that such action is necessary to protect these areas. It follows that the

extent of the areas so designated should be no greater than necessary and that the specific material banned for dumping in the designated area must be of a type which would affect the area to an unacceptable degree were it to be introduced therein.

(d) Any application for a permit under section 102 for transportation for dumping or dumping of dredged material into the waters of the contiguous zone or other high seas areas shall be accompanied by a certificate from the Secretary of the Army that the area chosen for dumping is the only reasonably available alternative. Such permit shall issue, unless the Administrator finds that the material to be dumped will adversely affect municipal water supplies, shellfish beds, wildlife, fisheries, or recreation areas.

Section 103(a) *Permit Conditions*. This subsection contains the specific items which are required to be contained in any permit issued under this title. It applies to the general permits authorized by subsection (c) of this section, as well as to the specific permits authorized under section 102. Permit provisions shall include statements as to (1) the type of material involved, designated with sufficient particularity to identify it for the purpose of surveillance and enforcement; (2) the amount of material authorized for transportation or for dumping; (3) the location where the transportation will be terminated or where the dumping will occur; (4) the effective period of the permit, including its specific expiration date; (5) any special provisions deemed necessary by the Administrator, after consultation with the Secretary of Transportation (Coast Guard) to insure effective monitoring, surveillance, and enforcement; and (6) any other matters that the Administrator deems appropriate.

(b) This subsection authorizes the Administrator to prescribe processing fees and reporting requirements.

(c) This subsection authorizes the Administrator to issue general permits in connection with specified material or classes of material which are determined to have a minimal adverse environmental impact on the areas designated. Thus, for certain types of periodic or continuing activities where certain materials are of little significance when dumped in certain areas, the Administrator may use a general permit system rather than require a specific permit for each transportation or dumping operation.

Notice and hearing requirements for the general permit procedures would be similar to those described with respect to section 102, and the general permits would be subject to the criteria to be established by that section.

(d) This subsection requires that permits shall be reviewed and, if appropriate, revised not less frequently than every three years. It is not intended to prohibit or discourage review or revisions more frequently than every three years, or to suggest that three years would be a standard or appropriate period for the duration of a permit. Rather, the intent is that no more than three years will pass before a permit will be reviewed, and revised if appropriate. The subsection also authorizes the Administrator to limit, deny, alter, or revoke, partially or entirely, any permit where he finds that the permitted or requested activity cannot be carried out consistently with the criteria and other factors required to be applied by him when evaluating a permit

application. The subsection also requires that any action subsequent to the original issuance of a permit can be taken only after notice and opportunity for hearing has been afforded the affected person or the permittee.

(e) This subsection makes it clear that the burden of providing sufficient information lies on the permit applicant. The Administrator is required to get from the applicant the information necessary for the necessary determination before a permit issues.

(f) This subsection includes a requirement that all information received by the Administrator, as a part of the permit process shall be made available to the public as a matter of public record, at every stage of the proceeding leading up to the issuance of a permit, subject to the provisions of the Freedom of Information Act (5 U.S.C. 552). The requirements of the subsection will be met where the information is available at a reasonable place for inspection and at reasonable times. It also requires that once the final determination has been made, such determination will be made available as a matter of public record together with the supporting reasons for it.

(g) This subsection requires a copy of any permit to be placed in a conspicuous place in the vessel to be used for transportation or dumping. It further requires that, in order to keep the enforcement agency informed, an additional copy shall be furnished to the appropriate United States Coast Guard official having the responsibility for monitoring and enforcing the particular permit.

Section 104. (a) *Penalties.* Any person who violates any provision of the title, or a regulation promulgated under the title, or a permit issued under this title, shall be liable to a civil penalty of not more than \$50,000 for each violation, to be assessed by the Administrator. No penalty may be assessed under this section without notice to the person charged and an opportunity for an administrative hearing on such violation, should that person desire such a hearing. In determining the amount of penalty to be assessed, the Administrator is required to evaluate the gravity of the violation, whether there have been prior violations, and the individual's demonstrated good faith in seeking to correct the situation after he has been notified of a violation.

In addition, this subsection provides that, for good cause shown, the Administrator may remit or mitigate an assessed penalty to a smaller amount. This provides the Administrator with some flexibility even after a penalty assessment has been determined, where the person against whom the penalty has been assessed presents to the Administrator facts which warrant subsequent mitigation. This might include newly discovered facts which were not known at the time of, or prior to, the assessment, and could not have been readily ascertained by the exercise of due diligence. Upon failure of the offending party to pay the penalty as finally assessed, the Administrator may request the Attorney General to bring an action in the appropriate Federal district court for payment.

(b) In addition to the civil penalty under subsection (a), this subsection provides for a criminal penalty of not more than \$50,000, or imprisonment for not more than one year, or both, for any person who is convicted of knowingly violating this title, regulations, or permits issued thereunder. The term "knowingly violates" refers to a con-

scious act or conscious omission of the offender which amounts to a violation of the law, regulation, or permit.

Federal employees and agencies are, by the definition of "person" (see section 3(e)), excluded from the application of civil and criminal penalties provided in subsections (a)-(f) of this section. The Committee is satisfied that Federal administrative disciplinary procedures are adequate for the purposes of this Act. The Committee intends to follow closely the administration of the Act. Moreover, alternative relief is provided in this regard through the provisions of subsection (h), dealing with citizen suits to enjoin such agencies from such acts.

(c) The Committee has inserted a new subsection consistent with the Federal Water Pollution Control Act Amendments of 1971 (S. 2770). The subsection provides for a fine of not more than \$10,000 or imprisonment for not more than six months for any person convicted of knowingly making any false statement, representation, or certification in connection with the permit program, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the Act.

(d) This subsection provides that for penalty purposes each day of a continuing violation shall constitute a separate offense. The same is true where a violation is committed by dumping from several units, such as vessels or aircraft, in one dumping operation.

(e) This subsection provides for equitable relief by the United States to enjoin violations of the title, of regulations or of permits.

(f) This subsection provides for the in rem liability of a vessel, used in a violation, for any civil penalty assessed or criminal fine imposed. It exempts from liability a public vessel (as defined in section 13 of the Federal Water Pollution Control Act, as amended, and any other vessel unless one or more of the owners or, in the case of a bareboat charter, one or more of the charterers was either an consenting part or privy to the violation.

(g) This subsection provides authority and procedures under which a permit may be revoked or suspended by the Administrator in the event of a permit violation.

(h) This subsection provides for a civil suit by any person on his own behalf to enjoin violations of the Act or violations of regulations, or of an issued permit by any person, including the United States and any other government agency. It limits the institution of such suits in equity to those situations where the Administrator has not commenced appropriate action within a certain period of time and it bars such suits if (1) an appropriate civil action has been limited, (2) an appropriate criminal action has been initiated, (3) if appropriate administrative action to impose a penalty has been undertaken, or (4) if revocation or suspension of a permit has been initiated. When a suit is filed under this subsection, the United States may intervene as a matter of right. Furthermore, in issuing a final order in any such suit the court may award certain costs of litigation to any party when it concludes, in its discretion, that such an award is appropriate (e.g., if the plaintiff shows that the suit was meritorious, and not filed for the sake of mere harassment). On the other hand, if the court concludes that the purpose of the suit was harassment, the court may award such costs to the defendant. It is expressly provided that the right of action provided

by this subsection shall in any way restrict or supersede any other right to legal action which is afforded the potential litigant in any other statute or the common law.

(i) This subsection exempts from the penalty procedure any dumping which otherwise would be subject to penalty, if the materials are dumped in an emergency, to safeguard life at sea. This subsection cannot be used to justify the initiation of transportation for dumping. It is intended to relieve from liability people already at sea where lives are endangered and where appropriate permit applications would not be possible. When any such emergency dumping occurs, it shall be reported to the Administrator under such conditions as he prescribes.

Section 105(a). *Relationship to other laws.* This subsection supersedes any other conflicting statutory authority which provides for the issuance of permits or other authorizations for transporting or for dumping those materials in waters covered by this title after its effective date.

(b) This subsection recognizes the authority of the Secretary of the Army to protect navigation, and requires the Administrator to consult with the Secretary of the Army if it appears that the disposition of material to be dumped or to be transported for dumping may affect navigation. If the Secretary of the Army determines that navigation will be unreasonably impaired, the Administrator may not issue a permit.

(c) This subsection preempts State regulation of activities regulated by this title. Nevertheless, it provides that where a State wishes to protect its waters through criteria more stringent than the Federal criteria, that State may propose to the Administrator additional criteria.

If the Administrator finds, after notice and opportunity for hearing that the proposed additional criteria are not inconsistent with the purposes of this title, he may adopt the proposed criteria in whole or part. Thereafter the additional criteria shall become Federal criteria for those state waters and will be regulated and enforced in the same manner as other criteria under section 102. The Administrator must make this determination within 120 days of receipt of the proposed criteria.

(d) This subsection provides that nothing in this title shall be deemed to affect in any manner any provision of the Fish and Wildlife Coordination Act as amended.

Section 106. (a). *Enforcement.* This subsection authorizes the Administrator to enter into agreement for the use of personnel, services and facilities of other Federal or State departments, agencies, and instrumentalities to carry out his responsibilities under this title.

(b) The Administrator is authorized under this subsection to delegate responsibility and authority for reviewing and evaluating permit applications both within his agency and to other Federal departments and agencies.

(c) The Secretary of Transportation (U.S. Coast Guard) is given the responsibility for surveillance, monitoring as requested by the Secretary of Commerce, and enforcement under this title to prevent unlawful transportation of material for dumping or dumping, as specified in the title or in the regulations and permits issued thereunder. This enforcement activity shall include regulations to be issued by the

Secretary of the Department in which the Coast Guard is operating establishing specifications for safe transportation, handling, carriage, storage, and stowage. Unlike the authority for permits for dumping and transportation for dumping, which under the title are limited to areas beyond the territorial jurisdiction of the United States, the Coast Guard's regulatory power over the safety aspects of transportation extend to all navigable waters of the United States, both internal and territorial, as well as to those portions of the oceans, coastal and other waters covered by the title. In addition, this subsection requires the Secretary of the Department in which the Coast Guard is operating to supply information required by other departments and agencies having responsibilities under the Act on a reimbursable basis.

Section 107. *Regulations.* This subsection authorizes necessary regulations to be issued by the Administrator and the Secretary of the department in which the Coast Guard is operating to implement the title.

Section 108. *International Cooperation.* This subsection directs the Secretary of State, in consultation with the Administrator, to take appropriate measures to encourage and promote the acceptance and implementation of the policies of this Act throughout the international community.

Section 109. *Effective Date and Savings Provision.* This subsection provides (a) that this title shall take effect 6 months after the date of enactment of the Act, and (b) protects any legal action begun, or right of action accrued, under any other provision of law prior to the effective date of this title.

Section 110. *Authorizations for appropriations.* This subsection authorizes to be appropriated such sums as may be necessary not to exceed \$3,600,000 for fiscal year 1973 or \$5,500,000 for fiscal year 1974 for the purposes and administration of this title. The estimated costs are included in this report.

Section 111. *Annual Report.* This new section requires the Administrator to report annually on or before June 30 (beginning June 30, 1972) to the President and to the Congress on his administration of title I, including recommended additional legislation if deemed necessary.

TITLE II—COMPREHENSIVE RESEARCH ON OCEAN DUMPING

Section 201. This authorizes the Secretary of Commerce in conjunction with the Coast Guard and the Environmental Protection Agency, to develop a comprehensive program of research as to the effects of the dumping of material in the oceans, coastal, and other waters. This and the other research activities authorized by this Act must be carried out in conjunction with other agencies of government with similar research programs. Duplication of research effort is not intended by this section, or section 202. This section authorizes a three-year program beginning in the fiscal year in which the Act is enacted.

Section 202. This directs the Secretary of Commerce to undertake a comprehensive program of research as to the global effects of various activities presently engaged in by man and of other natural forces.

The range of factors to be considered in developing these research programs is deliberately broad, so as not to prevent the Secretary of Commerce from taking into account any factors that are relevant to the problems with which it is concerned.

(b) This authorizes the Secretary of Commerce to operate under the foreign policy guidance of the President and pursuant to international treaties made by the President with the advice and consent of the Senate, and in conjunction with other nations or groups of nations, in carrying out his research responsibilities under this section. It also provides a clear direction that, to the maximum extent possible, the results of this research will be widely disseminated and brought to the attention of the public and the appropriate decision-making bodies, both in this country and elsewhere.

(c) This requires a report in January of each year on the research program and the results of such activities undertaken during the previous fiscal year.

(d) Each Federal department, agency, and independent instrumentality is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purpose of this title and, to the extent permitted by law, to furnish such information as may be requested.

(e) This authorizes to be appropriated not to exceed \$1 million in each of three fiscal years beginning in the year in which this Act is enacted, to carry out the research provided for in this section.

The second Committee amendment is of a technical nature and amends the title of the bill to reflect the substitute text, as follows: "AN ACT to regulate the transportation for dumping and dumping of material in the oceans, coastal, and other waters, and for other purposes."

ESTIMATED COST OF THE LEGISLATION

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), the Committee estimates that the cost of H.R. 9727 will be as follows:

(1) To implement Title I the six year cost for the Environmental Protection Agency will be \$22,300,000; \$2,000,000 for fiscal year 1973; \$4,000,000 for 1974; \$4,500,000 for 1975; \$4,000,000 for 1976; \$3,900,000 for 1977; and \$3,900,000 for 1978; and for the Department of Transportation, on behalf of the Coast Guard, for the five-year period (1973-1977) \$7,300,000; and

(2) To carry out the research provisions of Title II for the three-year (1973-1975) life of the authorization, the maximum cost would be \$2,000,000 per year, or \$6,000,000.

The Committee is not aware of any estimates of costs made by any Federal agency which are different from those made by the Committee.

IN SUMMARY [In millions of dollars]

	1973	1974	1975	1976	1977	1978
Title I:						
Environmental Protection Agency.....	2.0	4.0	4.5	4.0	3.9	3.9
Department of Transportation.....	1.6	1.5	1.4	1.0	1.0	.8
Title II: Department of Commerce.....	2.0	2.0	2.0			
Total.....	5.6	7.5	7.9	5.0	4.9	4.7

CHANGES IN EXISTING LAW

There are no changes in existing law resulting from this legislation.

DEPARTMENTAL REPORTS

The following are reports from the various departments and agencies on the bills similar to H.R. 9727 (S. 1238), (S. 1082), and (S. 1286), on which the Committee held hearings:

ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., February 10, 1971.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill "to regulate the dumping of material in the oceans, coastal, and other waters and for other purposes."

We recommend that the bill be referred to the appropriate committee for consideration and that it be enacted.

The proposed legislation would implement the recommendations of the report "Ocean Dumping—A National Policy." That report, requested by the President in his April 15, 1970, message on waste disposal, was prepared by the Council on Environmental Quality and made public by the President on October 7, 1970.

The report points out that there is a critical need for a national policy on ocean dumping. Many of the wastes now being dumped are heavily concentrated and contain materials that have a number of adverse effects. Many are toxic to human and marine life, deplete oxygen necessary to maintain the marine ecosystem, reduce populations of fish and other economic resources, and damage esthetic values. In some areas, such as the New York Bight, the environmental conditions created by ocean disposal of wastes are serious.

The Council study indicates that the volume of waste materials dumped in the ocean is growing rapidly. Because the capacity of land-based waste disposal sites is becoming exhausted in some coastal cities, communities are looking to the ocean as a dumping ground for their wastes. Faced with higher water quality standards, industries may also look to the ocean for disposal. The result could be a massive increase in the already growing level of ocean dumping. If this occurs, environmental deterioration will become widespread.

In most cases, feasible and economic land-based disposal methods are available for wastes currently being dumped in the ocean. In many cases, alternatives to ocean dumping can be applied positively for purposes such as land reclamation and recycling to recover valuable waste components.

Current regulatory activities and authorities are not adequate to handle the problem of ocean dumping. States do not exercise extensive control over ocean dumping, and generally their authority extends only

within the three-mile territorial sea. The greater part of current dumping occurs outside these waters. The Army Corps of Engineers has regulatory authority over ocean dumping but, again, this is largely confined to the territorial sea. The Corps also has responsibility to facilitate navigation, chiefly by dredging navigation channels. As such, it is in the position of regulating activities over which it also has operational responsibility. The Coast Guard enforces several Federal laws regarding pollution but has no direct authority to regulate ocean dumping. The authority of the Federal Water Pollution Control Act does not provide for issuance of permits to control ocean dumping. And the Atomic Energy Commission has authority only for disposal of radioactive materials. The Council believes that new legislative authority is necessary.

Taken together, present responsibilities are dispersed and operational agencies exercise responsibility to regulate themselves and entities performing work consistent with their primary mission. It is now necessary that responsibility for ocean dumping be centralized in an agency whose chief role is environmental control. The enclosed bill would give this responsibility to the Environmental Protection Agency.

The proposed legislation would bar the transportation of material for dumping and the actual dumping itself in the oceans, coastal waters and Great Lakes, except as authorized by permits issued by the Administrator of the Environmental Protection Agency. The Administrator would be empowered to ban ocean dumping of certain materials and to designate recommended safe sites for disposal. Transportation for dumping or dumping without a permit would be subject to civil and criminal penalties.

This legislation would provide a comprehensive framework for regulating the transportation and dumping of materials and forestalling pressures to dispose of a vast new influx of wastes in the oceans, coastal waters and the Great Lakes. Placing regulatory authority in the Environmental Protection Agency should strengthen the refinement and implementation of a national policy.

A detailed section-by-section analysis of the bill is enclosed.

The bill is part of the President's environmental program as announced in his Environmental Message of February 8, 1971. It will be administered by the Environmental Protection Agency and was developed in coordination with the Council on Environmental Quality.

The Office of Management and Budget informs me that enactment of this proposal is in accord with the program of the President.

Sincerely yours,

WILLIAM D. RUCKELSHAUS, *Administrator.*

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED MARINE PROTECTION ACT OF 1971

The title of the proposed act is designated as the "Marine Protection Act of 1971."

Section 2, drawing on the report of the Council on Environmental Quality made public by the President October 7, 1970, makes a finding by the Congress that unregulated dumping of material in the oceans, coastal, and other waters endangers human health, welfare, and ameni-

ties, and the marine environment, ecological systems, and economic potentialities. It declares a federal policy of regulating dumping of all types of material in the relevant waters and of vigorously limiting the dumping of material which could have an unfavorable effect.

Section 3 defines certain terms used in the proposal. Subsection 3(a) defines the responsible official for implementation of the legislation as the Administrator of the Environmental Protection Agency (EPA). Subsection 3(b) provides that the proposal applies to the oceans, to gulfs, bays, and other similar salt waters, other coastal areas where the tide ebbs and flows, and to the Great Lakes.

Subsection 3(c) defines material, the transportation for dumping and dumping of which are regulated by the proposal, very broadly as "matter of any kind or description", and then, for illustrative purposes, but without limiting the comprehensive scope of this initial definition, lists specific materials which are included in the general definition. Oil and sewage from vessels, discharges of which are covered by the Federal Water Pollution Control Act, are excluded from the scope of this Act.

Subsection 3(e) defines "person" in such a way that all Federal, State, and foreign governmental organizations, employees, and agents, along with private persons or entities, are included within the prohibition on transportation for dumping or dumping contained in Section 4. Federal organizations, employees, and agents, however, are excepted from the definition of "person" insofar as section 6, providing for penalties, is concerned. Thus, Federal organizations, employees, and agents must comply with the permit and standard-setting provisions of the Act, *i.e.*, they would be required to obtain approval from the Administrator of EPA for the transportation for dumping or the dumping of materials in the relevant waters, but they are not liable for or subject to the penalty provisions.

Subsection 3(f) defines dumping for purposes of the Act as "a disposition of material". Provisos make two important exceptions to this general rule of applicability. The first proviso excepts from the Act's coverage disposition of effluents from any outfall structure or routine discharges of effluents incidental to the propulsion of vessels. Municipal sewage outfalls or industrial waste outfalls come within this proviso. Discharges of effluents other than sewage from outfalls come within the purview of standards set pursuant to the Federal Water Pollution Control Act and also will be subject to the proposed permit program under the Refuse Act (33 U.S.C. § 407). Municipal sewage outfalls also come under the Federal Water Pollution Control Act's standards and also are affected by that Act's assistance programs.

The second proviso could be called the "lobster-pot" proviso. It excepts intentional placement of devices in the relevant waters or on the submerged lands beneath those waters. Several federal departments and agencies place testing, monitoring, sensing, or surveillance devices on the ocean floor. Under this proviso, the placement of such items or their transportation for placement is not within the coverage of the proposal. Private activities similarly not within the proposal would include placing into the ocean and other pertinent waters lobster traps, off-shore drilling platforms, pipelines, or cables. The latter portion of the proviso ensures that any excepted placement of devices

does not include placement of material to produce an effect attributable only to the physical presence of the material in the ocean or other relevant waters. Thus, if car bodies or other similar material were placed in the ocean to serve as a shelter for fish, the effect from placing the car bodies would be attributable only to the physical presence of the car bodies in the ocean, and the placement would constitute a dumping for which a permit would be required under the Act.

Special note should also be made of the fact that "dumping" as defined in subsection 3(f) would not include an activity which has as its primary purpose a result other than "a disposition of material" but which involves the incidental depositing of some debris or other material in the relevant waters. For example, material from missiles and debris from gun projectiles and bombs ultimately come to rest in the protected waters. Such activities are not covered by this Act.

Except where the Administrator has issued a permit for such activity, subsection 4(a) of the proposal prohibits transportation of material from the United States for the purpose of dumping it in the oceans, coastal, and other waters. Similarly, except where a permit has been granted, section 4(b) prohibits dumping of material in that part of such waters which is within the territorial jurisdiction of the United States, or in the Contiguous Zone of the United States when the dumping affects the territorial sea or territory of the United States.

Section 5 places authority to grant transportation and dumping permits in the Administrator of EPA, provides standards for his use in acting on permit applications, and governs the nature of permits which may be issued.

Section 5(a) allows issuance of a permit where the applicant presents information which indicates that the transportation or dumping or both will not unreasonably degrade or unreasonably endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator is directed to establish and apply criteria for reviewing and evaluating permit applications. In establishing or revising the criteria, the Administrator is required to consider the likely impact of the proposed dumping along with alternative locations and methods of disposal, including those based on land, the probable impact of using such alternatives on considerations affecting the public interest, and the probable impact of issuing or denying permits on such considerations. In establishing or revising criteria, the Administrator is directed to consult with the heads of concerned departments and agencies.

Subsection 5(b) authorizes the Administrator to establish and issue various categories of permits. If he deems such a step to be desirable, the Administrator could set different procedures for handling applications in the various categories. Subsection (b)(2) allows the Administrator to require applicants for permits to provide necessary information. The Administrator could require differing amounts and types of information according to category.

Subsections 5(c) and 5(d) set out the requirements which may be incorporated into permits issued under the authority of subsection 5(a). They also allow the Administrator, as he deems appropriate, to state further requirements and actions, such as charges for permits or reporting on actions taken under a permit.

Subsection 5(e) authorizes the Administrator to grant general permits for the transportation for dumping or dumping of quantities and types of materials which he determines will have a minimal effect on the ocean. This provides flexibility to give general permits for certain types of periodic or continuing activities where the amounts dumped are minimal.

Subsection 5(f) authorizes the Administrator to limit or deny the issuance of permits involving specified substances where he finds that the substances cannot be dumped consistently with the provisions of and criteria established under subsection 5(a). In such cases the Administrator may also alter or revoke partially or entirely the terms of existing permits.

Subsection 5(g) allows the Administrator to designate recommended sites for dumping specified materials. This would give guidance to applicants and facilitate the Administrator's implementation of the control programs.

Subsection 5(h) establishes a very limited exemption from the prohibition on transportation for dumping or dumping where no permit has been granted. Such transportation or dumping is not prohibited where it is necessary in an emergency to safeguard human life. In such cases reports of the excepted emergency actions must be made to the Administrator.

Section 6 provides for penalties. Under subsection 6(a) the Administrator could assess a civil penalty recoverable in federal district court, of up to \$50,000 for each violation. Subsection 6(b) establishes, in addition, criminal sanctions for knowing and willful violations. The court could assess a fine of up to \$50,000 or order imprisonment for a period of up to one year, or both. For those cases where violations are of a continuing nature, and for the purpose of imposing civil penalties and criminal fines but not imprisonment, subsection 6(c) makes each day of such a violation a separate offense. Under the provisions of subsection 6(d), the Attorney General is authorized to seek equitable relief to redress violations. Subsection 6(e) subjects vessels used in violations to in rem liability for any civil penalty assessed or criminal fine imposed. Public vessels within the meaning of subsection 13(a) (3) of the Federal Water Pollution Control Act and other public property of a similar nature would not be subject to the remedy authorized by this provision. Subsection 6(f) adds authority for the Administrator to revoke or suspend a permit issued under subsection 6(a) if the permit's provisions have been violated.

Section 7 deals with the relationship of this legislation to other laws. Generally, except as provided in subsections 7(b) and 7(c), it provides that after the Act's effective date, existing licenses, permits, or authorizations would be terminated to the extent they authorize activity covered by this proposal, and that further licenses, permits, or authorizations of a similar nature could not be issued.

Subsection 7(b) maintains present responsibility and authority contained in the Atomic Energy Act of 1954, and provides that the provisions of Sections 4 and 7(a) of this proposal do not apply to actions taken under that Act. However, the AEC must consult with the Administrator before issuing a permit to conduct any activity otherwise regulated by this proposal. Moreover, the AEC must comply with the

radioactive-material standards set by the Administrator, and the Administrator is directed to consider the policy expressed in subsection 2(b) of this proposal along with the factors stated in subsections 5(a)(1) and 5(a)(2) in setting such standards for the waters covered by this proposal.

Subsection 7(c) relates to authorities contained in the Rivers and Harbors Act of 1899, respecting dredging, filling, harbor works, and maintenance of navigability. The powers are exercised for the most part by the Secretary of the Army and the Chief of Engineers. Except for the limited supersession found in subsection 11(e), the Rivers and Harbors Act authorities are not negated or abrogated, nor are existing licenses or permits issued under the Act terminated. Rather, in situations where this Act and the Act of 1899 both apply to dumping of material in connection with a dredge, fill or other permit issued by the Corps of Engineers, issuance of the permit requires a certification by the Administrator of EPA that the activity is in conformity with this proposal and any regulations issued under it. The Administrator will not issue separate permits in such cases.

After this Act becomes effective, the Department of the Army's permit program under the Refuse Act, which is administered in close cooperation with EPA on all water quality matters, will continue to regulate the disposition of any effluent covered by the Refuse Act from any outfall structure regardless of the waters into which this disposition occurs, in addition to regulating all depositing of material into other navigable waters of the United States not covered by subsection 4(b) of this Act.

Subsection 7(d) provides for consultation by the Administrator of EPA with the Secretary of the Army in cases where the Administrator finds that the proposed activity may affect navigation or create an artificial island on the Outer Continental Shelf.

Subsection 7(e) saves State or local laws from being preempted by this proposal.

Section 8 allows the Administrator to use, by agreement, resources of other federal agencies, on either a reimbursable or non-reimbursable basis. In subsection 8(b) the Administrator is authorized to delegate responsibility for acting on permit applications to an officer of EPA or, by agreement, to the head of other federal departments or agencies, such as the Commandant of the Coast Guard. Subsection 8(c) directs that surveillance, and other appropriate enforcement activity be conducted by the Secretary of the department in which the Coast Guard is operating.

Section 9 gives the Administrator power to issue appropriate regulations in carrying out the responsibilities and authority conferred by the Act.

Section 10 directs the Secretary of State, in consultation with the Administrator, to seek appropriate international action and cooperation to support the policy of this proposal.

Subsections 11(a) and 11(b) repeal the Supervisory Harbors Act of 1888, as amended (33 U.S.C. §§ 441-451b), and the provision of the Rivers and Harbors Act of 1899 (33 U.S.C. § 418) which preserved the Supervisory Harbors Act from supersession by the 1899 Act. The Supervisory Harbors Act provides a special authority to control transit in and from the harbors of New York, Baltimore, and

Hampton Roads, Virginia. This authority has been used to regulate ocean dumping. The proposed Act would replace that authority. A portion of the Act of August 5, 1886 (33 U.S.C. § 407a), which pertains to deposits of debris from mines and stamp works, and which is covered by this bill or the Refuse Act, is also repealed. A provision contained in the Rivers and Harbors Act of 1905 (33 U.S.C. § 419), which has been used to buttress the Corps of Engineers' authority to regulate ocean dumping, is superseded, insofar as it authorizes action that would be regulated by this proposal. Lastly, section 13 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 407), commonly known as the Refuse Act, is superseded, but only insofar as it applies to dumping of material in the waters covered by subsection 4(b) of this proposal.

Section 12 provides that this proposal shall take effect six months after its enactment and further saves from being affected by this proposal legal actions begun or rights of action accrued prior to the proposal's effective date.

Section 13 contains an authorization for appropriations to carry out the purposes and administration of the proposal.

MARINE PROTECTION ACT OF 1971

A BILL To regulate the dumping of material in the oceans, coastal, and other waters, and for other purposes

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Marine Protection Act of 1971".

FINDING, POLICY, AND PURPOSE

SEC. 2. (a) Unregulated dumping of material into the oceans, coastal, and other waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) Congress declares that it is the policy of the United States to regulate the dumping of all types of material in the oceans, coastal, and other waters and to prevent or vigorously limit the dumping into the oceans, coastal, and other waters of any material which could adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. To this end, it is the purpose of this Act to regulate the transportation of material from the United States for dumping into the oceans, coastal, and other waters, and the dumping of material by any person from any source if the dumping occurs in waters over which the United States has jurisdiction.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Oceans, coastal, and other waters" means oceans, gulfs, bays, salt-water lagoons, salt-water harbors, other coastal waters where the tide ebbs and flows, and the Great Lakes.

(c) "Material" means matter of any kind or description, including, but not limited to, dredge spoil, solid waste, garbage, sewage sludge, munitions, chemical, biological, and radiological warfare agents, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial waste, *provided*, that it does not mean oil within the meaning of section 11 of the Federal Water Pollution Control Act or sewage from vessels within the meaning of Section 13 of said Act.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, any employee, agent, department, agency, or instrumentality of any State or local unit of government, or foreign government, and, except as to the provisions of section 6, any employee, agent, department, agency, or instrumentality of the Federal Government.

(f) "Dumping" means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure, or a routine discharge of effluent incidental to the propulsion of vessels: *And provided further*, That it does not mean the intentional placement of any device in the oceans, coastal, or other waters or on the submerged land beneath such waters, for the purpose of using such device there to produce an effect attributable to other than its mere physical presence.

(g) "District Court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

PROHIBITED ACTS

SEC. 4. Except as such transportation or dumping or both may be authorized in a permit issued by the Administrator—

(a) No person shall transport material from the United States for the purpose of dumping it into the oceans, coastal, and other waters, and

(b) No person shall dump material (1) in that part of the oceans, coastal, and other waters which is within the territorial jurisdiction of the United States, or, (2) in a zone contiguous to the territorial sea of the United States, extending to a line 12 nautical miles seaward from the base line of the territorial sea as provided in Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, to the extent that it may affect the territorial sea or the territory of the United States.

PERMITS

SEC. 5. (a) The Administrator may issue permits to transport material for dumping into the oceans, coastal, and other waters, or to dump material into the waters described in subsection 4(b), or both, where the applicant presents information respecting the proposed

activity which in the judgment of the Administrator indicates that such transportation, or dumping, or both will not unreasonably degrade or unreasonably endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(1) the likely impact of the proposed dumping on human health, welfare, and amenities, and on the marine environment, ecological systems, and economic potentialities, including an assessment of—

(A) the possible persistence or permanence of the effects of the proposed dumping,

(B) the volume and concentration of materials involved, and

(C) the location proposed for the dumping.

(2) alternative locations and methods of disposal, including land-based alternatives; the probable impact of requiring the use of such locations or methods of disposal on considerations affecting the public interest; and the probable impact of issuing or denying permits on considerations affecting the public interest.

In establishing or revising such criteria, the Administrator shall consult with the Secretaries of Commerce, Interior, State, Defense, Agriculture, Health, Education and Welfare, and Transportation, the Atomic Energy Commission, and other appropriate Federal, State, and local officials. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary of the Army. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards.

(b)(1) The Administrator may establish and issue various categories of permits, including the general permits described in subsection (e).

(2) The Administrator may require an applicant for a permit under subsection (a) to provide such information as the Administrator may consider necessary to review and evaluate such an application.

(c) Permits issued under subsection (a) may designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; and (5) such other matters as the Administrator deems appropriate.

(d) The Administrator may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued under subsection (a) as he deems appropriate.

(e) Notwithstanding any other provision of this Act, the Administrator may issue general permits for the transportation for dumping, or dumping, or both, of classes of materials which he determines will have a minimal impact, considering the factors stated in subsection (a).

(f) The Administrator may limit or deny the issuance of permits, or may alter or revoke partially or entirely the terms of permits issued by him under this Act, for the transportation for dumping, or the dumping, or both, of specified material, where he finds that such material cannot be dumped consistently with the criteria established pursuant to subsection (a). No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for hearing on such action as proposed.

(g) The Administrator may, considering the criteria established pursuant to subsection (a), designate recommended sites for the dumping of specified materials.

(h) Nothing in this Act shall prohibit any transportation for dumping or dumping of material where such transportation or dumping is necessary, in an emergency, to safeguard human life. Such transportation or dumping shall be reported to the Administrator within such times and under such conditions as he may prescribe by regulation.

PENALTIES

SEC. 6. (a) A person who violates section 4 of this Act, or regulations promulgated under this Act, or a permit issued under this Act by the Administrator shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such violation. Any such civil penalty may be compromised by the Administrator. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) In addition to any action which may be brought under subsection (a), a person who knowingly and willfully violates section 4 of this Act, regulations promulgated under this Act, or a permit issued under this Act by the Administrator shall be fined not more than \$50,000 or imprisoned for not more than one year, or both.

(c) For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense.

(d) The Attorney General or his delegate may bring actions for equitable relief to redress a violation by any person of this Act, regulations promulgated under this Act, and permits issued under this Act by the Administrator, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) A vessel, except a public vessel within the meaning of subsection 13(a)(3) of the Federal Water Pollution Control Act or other public property of a similar nature, used in a violation shall be liable

in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof: *Provided*, That no vessel shall be liable unless it shall appear that the owner was at the time of the violation a consenting party or privy to such violation.

(f) If the provisions of any permit issued under subsection (a) of section 5 are violated, the Administrator may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

RELATIONSHIP TO OTHER LAWS

SEC. 7. (a) After the effective date of this Act, all licenses, permits, or authorizations which have been issued by any officer or employee of the United States under authority of any other provision of law shall be terminated and of no effect to the extent they authorize any activity regulated by this Act. Thereafter, except as hereafter provided, no license, permit, or authority shall be issued by any officer or employee of the United States other than the Administrator which would authorize any activity regulated by this Act or the regulations issued hereunder.

(b) Nothing in this Act shall abrogate or negate any existing responsibility or authority contained in the Atomic Energy Act of 1954, as amended, and section 4 and subsection 7(a) of this Act shall not apply to any activity regulated by that Act: *Provided*, That the Atomic Energy Commission shall consult with the Administrator prior to issuing a permit to conduct any activity which would otherwise be regulated by this Act. In issuing any such permit, the Atomic Energy Commission shall comply with standards set by the Administrator respecting limits on radiation exposures or levels, or concentrations or quantities of radioactive material. In setting such standards for application to the oceans, coastal, and other waters, or for specific portions of such waters, the Administrator shall consider the policy expressed in subsection 2(b) of this Act and the factors stated in subsections 5(a)(1) and 5(a)(2) of this Act.

(c) (1) The provisions of subsection (a) shall not apply to actions taken before or after the effective date of this Act under the authority of the Rivers and Harbors Act of 1899.¹

(2) Except as provided in subsection 11(e), nothing in this Act shall be construed as abrogating or negating any existing responsibility or authority contained in the Rivers and Harbors Act of 1899: *Provided*, That after the effective date of this Act, no Federal license or permit shall be issued under the authority of the Rivers and Harbors Act of 1899 to conduct any activity otherwise regulated by section 4 of this Act and the regulations issued hereunder, unless the Administrator has certified that the activity proposed to be conducted is in conformity with the provisions of this Act and with the regulations issued hereunder.

¹ 33 U.S.C. § 401 et seq.

(3) Where a license or permit to conduct an activity has been granted under the authority of subsections (c) (1) and (c) (2) of this section and of the Rivers and Harbors Act of 1899, no separate permit to conduct such activity shall be required under this Act.

(d) Prior to issuing any permit under this Act, where it appears to the Administrator that the disposition of the material to be transported for dumping or to be dumped may affect navigation in the navigable waters of the United States or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary of the Army and no permit shall be issued if the Secretary of the Army determines that navigation will be unreasonably impaired.

(e) Nothing in this Act shall be construed as preempting any State, Federal Territory or Commonwealth, or subdivision thereof from imposing any requirement or liability.

ENFORCEMENT

SEC. 8. (a) The Administrator may, whenever appropriate, utilize by agreement, the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis.

(b) The Administrator may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of the Environmental Protection Agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping or dumping.

REGULATIONS

SEC. 9. In carrying out the responsibilities and authority conferred by this Act, the Administrator is authorized to issue such regulations as he may deem appropriate.

INTERNATIONAL COOPERATION

SEC. 10. The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to ensure protection of the marine environment, and may for this purpose, formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations in support of the policy of this Act.

REPEAL AND SUPERSESSION

SEC. 11. (a) The second proviso to the last paragraph of section 20 of the Act of March 3, 1899 (30 Stat. 1154), as amended,² is repealed.

² 33 U.S.C. §418.

(b) Sections 1, 2, 3, 4, 5, 6, and 7 of the Act of June 29, 1888 (25 Stat. 209), as amended,³ are repealed.

(c) Section 2 of the Act of August 5, 1886 (24 Stat. 329),⁴ is repealed.

(d) To the extent that it authorizes action regulated by this Act, section 4 of the Act of March 3, 1905 (33 Stat. 1147),⁵ is superseded.

(e) Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152), as amended,⁶ is superseded insofar as it applies to dumping, as defined in subsection 3(f) of this Act, of material in the waters covered by subsection 4(b) of this Act.

EFFECTIVE DATE AND SAVINGS PROVISION

SEC. 12. (a) This Act shall take effect six months after its enactment.

(b) No legal action begun, or right of action accrued, prior to the effective date of this Act shall be affected by any provision of this Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 13. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act.

U.S. DEPARTMENT OF THE INTERIOR.

OFFICE OF THE SECRETARY.

Washington, D.C., April 12, 1971.

HON. WARREN G. MAGNUSON.

*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: We respond to your request of March 24 for comment on S. 1238, a bill to regulate the dumping of material in the oceans, coastal, and other waters, and for other purposes. the Marine Protection Act of 1971.

The Department of the Interior strongly recommends enactment of this Administration proposal to provide long sought regulation of waste disposal in ocean, coastal, and Great Lakes waters of the United States.

S. 1238 would vest in the Administrator of the Environmental Protection Agency authority to control ocean dumping of waste materials through issuance of permits and enforcement of a prohibition against the unauthorized transport of dumping of such material. In determining whether or not to approve a permit application, the Administrator would be required to consider (1) the impact of dumping on the marine environment and human welfare and (2) other possible locations and methods of disposal, including land-based alternatives, but in no event would a permit be issued for a dumping in violation of applicable water quality standards. Section 5 provides authority to designate recommended sites for the dumping of specified materials,

³ 33 U.S.C. §§ 441-451b.

⁴ 33 U.S.C. § 407a.

⁵ 33 U.S.C. § 419.

⁶ 33 U.S.C. § 407.

and would allow the Administrator to deny, alter or revoke a permit for the disposal of any material that could threaten human health or the marine environment.

Jurisdiction would extend to all persons, including Federal, State, and foreign governmental organizations, who seek to dispose in territorial waters of the United States or the adjacent contiguous zone, to the extent that such disposal in the contiguous zone may affect the territorial sea or territory of the United States. Section 6 provides a civil penalty of not more than \$50,000 for each violation of the prohibition against unauthorized transport or disposal and criminal sanctions for knowing and willful violations. Surveillance would be conducted by the Coast Guard, and legal action taken by the Attorney General upon request of the Administrator. A thorough analysis of its draft bill was transmitted to the Congress on February 10 by the Environmental Protection Agency.

As your Committee is aware this Department has frequently expressed its opposition to the use of ocean waters for waste disposal. Implicit in our opposition of *all* ocean dumping, however, has been the recognition that feasible alternatives are not always available. Our concern for the environmental effects of uncontrolled dumping led to recent studies of the New York Bight and participation in the review of ocean dumping generally which preceded the issuance on October 7, 1970 of "Ocean Dumping—A National Policy", a report prepared by the Council on Environmental Quality.

We participated, too, in the preparation and review of legislation to implement the Council's recommendations. The bill now pending before your Committee, S. 1238, is the end result of close cooperation among those several Federal agencies with responsibility for the protection, conservation and management of our Nation's natural resources. The Department of the Interior will provide whatever assistance it can to the Administrator of the Environmental Protection Agency under section 5(a) of the Marine Protection Act of 1971.

President Nixon noted in his environmental message of February 8 that ocean disposal has a number of harmful effects, including destruction of marine life, decreased abundance of fish and other economic resources, modification of marine ecosystems, and impairment of aesthetic values. We urge prompt enactment of S. 1238, as the President suggested, "to assure that our oceans do not suffer the fate of so many of our inland waters, and to provide the authority needed to protect our coastal waters, beaches, and estuaries".

The Office of Management and Budget has advised that this report is in accord with the program of the President.

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., April 28, 1971.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on S. 1238, a bill to regulate the dumping of material in the oceans, coastal, and other waters, and for other purposes.

This Department supports the enactment of S. 1238 which carries out the recommendations set forth by the President in his February 8, 1971, message on the environment.

Under this bill, the Administrator of the Environmental Protection Agency would be authorized to issue permits for dumping materials into oceans, coastal, and other waters when, in his judgment, such dumping will not unreasonably endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

The Administrator, EPA, would be directed to establish criteria for evaluating permit applications on the basis of their likely environmental impact including (1) possible persistence of the effects of the proposed dumping, (2) volume and concentration of materials involved, and (3) the location proposed for dumping.

Of especial interest to this Department is the provision (Sec. 5 (a)2) that the Administrator, EPA, consider "alternate locations and methods of disposal including land-based alternatives. . ." Since most of the land in the United States is rural land, used for farming or forestry, this Department is concerned with any land-based alternatives which might be considered. The Department of Agriculture has information and expertise relevant to the suitability of various land sites for disposal of solids, either as sanitary landfills or through methods by which many solids may be beneficially incorporated in the soil. We wish to point out that the bill very appropriately provides that, in establishing or revising criteria against which dumping permit applications would be approved or denied, the Administrator, EPA, will consult with this Department, along with several other interested Federal agencies.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

U.S. ATOMIC ENERGY COMMISSION,
Washington, D.C., April 29, 1971.

HON. WARREN A. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR SENATOR MAGNUSON: The Atomic Energy Commission is pleased to reply to your letter of March 24, 1971, requesting our views

on S. 1238, a bill [t]o regulate the dumping of material in the oceans, coastal, and other waters, and for other purposes. We note that two bills which are identical to S. 1238 have been introduced in the House, viz., H.R. 4247 and H.R. 4723.

S. 1238, an Administration bill, would carefully regulate (1) the transportation of materials from the United States for the purpose of disposal in the oceans and coastal and other waters of the United States, and (2) the dumping of such materials in waters over which the United States has jurisdiction. The term "dumping" and other key words in these bills are clearly defined. Both transportation and dumping would be prohibited unless the Administrator of EPA issues an authorizing permit. The Administrator would be empowered to issue such permits "where the applicant presents information respecting the proposed activity which in the judgment of the Administrator indicates that such transportation, or dumping, or both will not unreasonably degrade or unreasonably endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities."

In reviewing permit applications the Administrator would be guided by criteria to be established by him in consultation with certain named Federal agencies, including the Atomic Energy Commission, as well as "other appropriate Federal, State, and local officials."

The Administrator would have very broad authority with respect to types and scopes of permits, but no permit could be issued for dumping that would violate applicable water quality standards. The bill provides that transportation or dumping without a permit would be permitted in emergency situations where necessary to safeguard human life; in such excepted instances, reports would have to be furnished to the Administrator "within such time and under such conditions as he may prescribe by regulation."

Under the caption "Relationship to Other Laws" the bill provides, among other things, that: "(b) Nothing in this Act shall abrogate or negate any existing responsibility or authority contained in the Atomic Energy Act of 1954, as amended, and section 4 and subsection 7(a) of this Act shall not apply to any activity regulated by that Act: Provided, The Atomic Energy Commission shall consult with the Administrator prior to issuing a permit to conduct any activity which would otherwise be regulated by this Act. In issuing any such permit, the Atomic Energy Commission shall comply with standards set by the Administrator respecting limits on radiation exposures or levels, or concentrations or quantities of radioactive material. In setting such standards for application to the oceans, coastal, and other waters, or for specific portions of such waters, the Administrator shall consider the policy expressed in subsection 2(b) of this Act and the factors stated in subsections 5(a) (1) and 5(a) (2) of this Act."

This provision recognizes that the Atomic Energy Act of 1954, as amended, vests the Atomic Energy Commission with regulatory authority over the construction and operation of nuclear facilities and the possession and use of certain defined nuclear materials, including the disposal of all radioactive materials, except radioactive material produced in accelerators and naturally occurring radium and its daughters.

In our view, the proposed legislation would provide for comprehensive and effective regulation of the discharge of materials into the marine environment. Accordingly, we favor the enactment of S. 1238.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Cordially,

GLENN T. SEABORG,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES.
Washington, D.C., May 7, 1971.

B-118370.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your letter of March 24, 1971, requesting our views on S. 1238, which, if enacted, would regulate the dumping of material in the oceans, coastal, and other waters.

We have no special information as to the advantages or disadvantages of the proposed measure and therefore have no comments to make concerning its enactment.

Sincerely yours,

ROBERT F. KELLER,
Assistant Comptroller General of the United States.

THE GENERAL COUNSEL OF THE TREASURY.
Washington, D.C., July 23, 1971.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1238, to regulate the dumping of material in the oceans, coastal, and other waters, and for other purposes.

The bill would regulate the dumping of all types of material in the oceans, coastal, and other waters within the jurisdiction of the United States and prevent or vigorously limit the dumping into these waters of any material which could adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities by requiring that a permit be obtained from the Administrator of the Environmental Protection Agency before any person could transport material from the United States for the purpose of dumping it into the ocean, coastal, and other waters within the jurisdiction of the United States. The Administrator of the Environmental Protection Agency would be authorized to prescribe regulations to carry out the provisions of the bill, in particular those concerning requirements for the issuance of dumping permits. The bill would provide a civil penalty of not more than \$50,000 to be assessed by the Administrator for each violation.

As the policy considerations involved in regulating the dumping of material in the oceans, coastal, and other waters within the jurisdiction of the United States do not relate to matters within the Treasury Department's jurisdiction, except for purposes of administration, we are expressing no views thereon. If the bill is enacted into law, we anticipate no administrative difficulties in carrying out our responsibilities under it.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee and that enactment of the proposed legislation would be in accord with the program of the President.

Sincerely yours,

ROY T. ENGLERT,
Acting General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., August 2, 1971.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to respond to your letter of March 24, 1971, requesting the Department's views on S. 1238 and S. 1286, bills to regulate the dumping of material in the oceans, coastal, and other waters and to establish an immediate program for the prevention of ocean pollution.

This Department has no objection to S. 1238 from the foreign policy viewpoint and recommends its enactment.

While S. 1286 regulates the same activities, it is less comprehensive in scope than S. 1238. S. 1286 does not provide for the licensing of ocean dumping activities taking place in waters under the jurisdiction of the United States which originates from outside United States territory. While at the present time, we know of no ocean dumping activity occurring off the coasts of United States territory which does not originate from United States jurisdiction, the Department of State feels that the more comprehensive approach as provided in S. 1238 should be included in any ocean dumping legislation passed by the Congress. The Department therefore, does not recommend enactment of S. 1286.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S. 1238 would be in accord with the program of the President.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., August 27, 1971.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on S. 1238, 92d Congress, a bill to regulate the dumping of material in the oceans, coastal, and other waters and for other purposes.

The purpose of the bill is stated in the title. If enacted, the bill would make the Administrator of the Environmental Protection Agency responsible for establishing appropriate regulations for the application of the environmental standards contained in the proposals. Any agency or person would have to obtain a permit from the Administrator before transporting materials for dumping or before dumping materials in the protected areas. There are certain exceptions to this latter requirement for routine operation of vessels and for intentional placement of devices in the waters, if such placement is for a purpose other than disposal.

The bill was introduced as a result of a proposal submitted to the Congress in connection with the President's environmental message of February 8, 1971. The Department of Defense supports the bill and recommends enactment.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there would be no objection to the presentation of this report for the consideration of the Committee, and that the enactment of S. 1238 would be in accord with the program of the President.

Sincerely yours,

J. FRED BUZHARDT.

○